MEMORANDUM FOR RECORD

Date: 02/12/2023

Subject: Systemic Racism Within the Phoenix VA Police Department

On the listed date, I, Matthew BENNETT, a Black male, and former VA Police Officer, **messaged** VA PIV employee **Richard "Smitty"** SMITH, an older Black male and U.S Army veteran. I asked SMITH about a rumor that had been spoken about within the VA during my entire duration (04/2018 **–** 08/2022) with the Phoenix VA Police Department.

THE RUMOR OF SMITH BEING HIRED AS CHIEF OF POLICE:

Officers spoke about SMITH being selected as the Chief of Police back around 2009, due to his extensive military career. It was rumored that he was given a written offer for the position **–** which he accepted. However, it was stated that the offer was rescinded and the position was given to Scott NEIBAUER **–** an older White male. As a result, SMITH took a position with the PIV Office.

CONFIRMATION OF EVENTS:

I asked SMITH about the rumor, and he stated that it was true. He also confirmed that he was given a written offer for the position of Chief of Police, but it was rescinded. SMITH explained to me that the position was filled (possibly on an interim status) by the Deputy Chief of Police at the time, Justin FLYNN, a White male. SMITH stated that NEIBAUER was selected for the position about a year later.

CONFLICTION OF EXPERIENCE REGARDING "ARREST AUTHORITY":

SMITH explained that he was told by the VA that he did not have the required background or experience possessing arrest authority[1]. SMITH stated that he was under the impression that he would obtain the required arrest authority upon completing the VA Law **Enforcement Training Center's (LETC) "**Basic Police Training Program.**"** However, SMITH did have experience possessing the equivalent of arrest powers by having the **"Power of** Apprehension[2]**."** As a Non-Commissioned Officer (NCO) in the U.S Army, SMITH had the authority to do the following:

- Quell quarrels, frays, and disorders.
- Apprehend persons.

POWER OF APPREHENSION DEFINED:

According to the Manual for Courts-Martial (MCM), ***"Apprehension is the equivalent of 'arrest' in civilian terminology. (In military terminology, "arrest" is a form of restraint.)"***

[1] Many VA Police Departments nationwide require applicant to have possessed a minimum of one (1) year of arrest authority or experience as a military police officer.
[2] Rule 302. Apprehension (a) Definition and scope. (1) Definition. Apprehension is the taking of a person into custody.

STATUTORY ARREST POWER DEFINED:

Statutory Arrest Authority is a mandate, given by a central authority, that allows an individual to seize a person's liberty. The power of arrest can also be used to protect a person, person(s) from harm, and/or to protect property from damage. For example, the mandate for VA Police arrest powers can be found in 38 U.S. Code § 902 **– "*Enforcement and arrest authority of Department police officers.*"**

10 U.S. CODE § 807 - ART. 7. APPREHENSION:

- ***(a) Apprehension is the taking of a person into custody.***
- ***(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.***
- ***(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.***

WHITE OFFICERS WHO WERE HIRED WITHOUT ARREST AUTHORITY:

Currently, the Phoenix VA Police employs three (3) White males who have never possessed arrest authority **–** prior to becoming VA Police Officers. The individuals had never been employed as law enforcement officers in their prior careers or personal lives. Additionally, neither of them had ever possessed "Statutory Arrest" powers.

The following officer are:

1. **Moreno PRIOA**
2. **Jeffrey MUARRY**
3. **Frederick DEWERTH**

THE HIRING OF PROIA:

PROIA is a U.S Army veteran, who had been working with the PIV department for a significant amount of time. Due to staff shortages and lack of VA Police dispatching personnel, PRIOA would volunteer and do overtime by conducting dispatching functions. This placed him in a position to gain exposure from management and VA Police personnel. PROIA began expressing his desire to become a VA Police Officer and to work for the department. To PROIA's disappointment, he did not have experience possessing arrest authority.

However, PROIA was coached by individuals to emphasize in his resume that he had the "Power of Apprehension" while serving as an NCO in the Army. This allowed him to qualify

for the position[3]. As a result, he was given the opportunity to interview for the position of police officer and was selected for the position.

THE HIRING OF MUARRY:

MUARRY was a U.S Marine veteran who had been a dispatcher for the Phoenix VA Police for some time. He was well liked and was humble. MUARRY, like PROIA, would often volunteer for overtime and fill in when there was no coverage. MUARRY had interest in becoming a VA Police Officer, but did not have law enforcement experience or ever had statutory arrest authority.

Individuals in the Phoenix VA Police Department really wanted him to get hired and gave him suggestions. I was asked by several officers, including Supervisory Police Officer, Christopher BERHOW (W/M), to assist MUARRY with his resume – which I agreed to. I was considered an expert in federal resumes by management and officers. MUARRY sent me his resume and I reviewed it. MUARRY had once worked as a Security Guard, but that position did not grant him statutory arrest powers.

I do not remember the extent I did on his resume or even if I completed it. I was helping many people with their resume at the time – so I don't remember all that was done. To the best of my knowledge, I do remember doing the most important part on his resume – which was emphasizing that he served as an NCO and had the "Power of Apprehension." I believe I clarified on MUARRY's resume that the Power of Apprehension was the military's equivalent of arrest powers. I do not remember if I completed the resume, but I do believe I sent him the resume back with that section completed.

MUARRY later applied for a VA Police position, interviewed, and was selected for a position.

THE HIRING OF DEWERTH:

DEWERTH's hiring was very controversial. I was not employed at the Phoenix VA at the time, but he was hired as a VA Police Officer without any law enforcement experience, past arrest authority, or even the power of apprehension. It was stated by VA Police Officer (now Lieutenant), Jeffery TERPENING, a U.S Marine Veteran, that DEWERTH had joined the Marines, but something happened where he was discharged in basic training. TERPENING felt that DEWERTH did not deserve the title of Marine; thus, proving that he would have never had a chance to obtain the Power of Apprehension.

DEWERTH was hired by the Phoenix VA Police around 2014, I believe. He attended the academy and successfully graduated. Apparently, human resources was attempting to have him removed, terminated, or placed in a different position because he did not have prior arrest authority. However, after the academy, he was a credentialed officer with statutory arrest powers. It was stated by officers that it somehow satisfied human

[3] Even with the "Power of Apprehension," some VA Police Department would still require that the applicant served in a position of a "Qualified Law Enforcement Officer."

resources and the matter was resolved. DEWERTH was later promoted to a Sergeant, Lieutenant, Captain, and now, a Major – with no prior law enforcement, military law enforcement, or experience that required arrest authority or the power of apprehension.

WHITE OFFICERS BENEFITED, WHILE BLACK OFFICERS DO NOT:

The examples above demonstrate how three (3) White male officers, unfairly benefited from having the same qualifications that SMITH had. SMITH's life and career was derailed like many other Black male officers that have worked for the Phoenix VA Police Department. I myself have been discriminated multiple times and harassed. I was not selected for a supervisory position or specialty positions such as Detective and Criminal Investigator – though I was more than qualified. Individuals like Richard KENNEDY (W/M), who lacked my experience and qualifications, were selected by the majority all White management at the time, and specifically by Tyler WHITT (W/M), to such positions.

DISPOSITION:

Based on the information above, there is direct evidence that the practices of the Phoenix VA Police Department and Phoenix Healthcare System have partaken in discriminatory acts against Black males. There is also sufficient probable cause that warrants an investigation by the Office of Resolution Management, Diversity & Inclusion (ORMDI) and the U.S. Equal Employment Opportunity Commission (EEOC) on the Phoenix VA Police – due to the lives and careers of Black male VA Police Officers that have been

DECLARATION OF TRUTH

"I, **Matthew Bennett**, declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Matthew Bennett

Digitally signed by Matthew Bennett
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